

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MICHAEL WILLIS, JR.

PLAINTIFF

v.

CIVIL NO. 05-4024

LINDA S. MCMAHON,¹ Commissioner
Social Security Administration

DEFENDANT

ORDER

Plaintiff, Michael Willis, Jr., appealed the Commissioner's denial of benefits to this court. On March 29, 2006, judgment was entered remanding plaintiff's case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. # 12). On July 10, 2006, plaintiff filed a motion for attorney's fees and costs under 28 U.S.C. § 2412, the Equal Access to Justice Act (hereinafter "EAJA"). (Doc. # 13). The defendant has filed a response objecting to the award of attorney's fees on the basis that the motion is untimely. (Doc. # 14).

A request for an award of attorney's fees and costs under the EAJA may be filed up until 30 days after the judgment becomes "not appealable" i.e., 30 days after the 60-day time for appeal has ended. *See Shalala v. Schaefer*, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993); 28 U.S.C. §§ 2412(d)(1)(B), (d)(2)(G). Therefore, to be timely, a request for attorney's fees under the EAJA should have been filed no later than June 27, 2006. Plaintiff's counsel filed this petition requesting attorney's fees under the EAJA on July 10, 2006. Since plaintiff's counsel filed the

¹Linda S. McMahon became the Social Security Commissioner on January 20, 2007. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Linda S. McMahon has been substituted for acting Commissioner Jo Anne B. Barnhart as the defendant in this suit.

petition for fees after the deadline for filing said petition had expired, plaintiff's request for attorney's fees under the EAJA is denied as untimely.

IT IS SO ORDERED this 8th day of February 2007.

/s/ *J. Marschewski*
HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE